Supreme Court, U. S.
FILED
OCT 11 1974
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1471

UNITED STATES OF AMERICA AND
FEDERAL COMMUNICATIONS COMMISSION,
Petitioners,

v.

NEW JERSEY STATE LOTTERY COMMISSION,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

STATEMENT IN LIEU OF BRIEF OF THE MARYLAND PUBLIC BROADCASTING COMMISSION, AMICUS CURIAE IN SUPPORT OF THE NEW JERSEY STATE LOTTERY COMMISSION

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The Maryland Public Broadcasting Commission participated in this proceeding in the Court below through

a brief *amicus curiae*. As indicated by the attached consents executed by all parties to this proceeding, The Maryland Public Broadcasting Commission has complied with Rule 42.2 and it respectfully requests consideration of the instant statement in lieu of brief *amicus curiae*.

The Maryland Public Broadcasting Commission is directly and vitally interested in this proceeding concerning the legality of the position of the Federal Communications Commission. The Commission's Order under review here provides that the winning number in a legal State lottery may not be broadcast by a radio or television station. The Commission also prohibits announcements concerning the drawing of the winning lottery ticket which may be interpreted as directly promotional in nature. The Court below has ruled that the Order is invalid insofar as it proscribes the announcement of the winning lottery number as part of a newscast.

The Maryland Public Broadcasting Commission was created by the 1966 Maryland Legislative General Assembly. The Commission has been legally and financially empowered to "develop, operate, and maintain a system of State, regional, and local facilities to provide educational and cultural television programming in the State." Its members are chosen from among residents of Maryland and must by statute be broadly representative of the State as a whole, and include persons especially skilled in fields which bring special competence in educational broadcasting to the membership. The Maryland Public Broadcasting Commission has full responsibility for and control over the

preparation, content, and programming of its stations.

The Maryland Public Broadcasting Commission has developed plans for a Statewide public broadcasting network. At present it operates television stations at Baltimore, Salisbury, and Hagerstown, Maryland, and a station is under construction at Annapolis, Maryland. All of these stations are subject to the rules and regulations of the Federal Communications Commission.

In November of 1972 the citizens of Maryland overwhelmingly approved a Constitutional Referendum proposal "modifying the prohibition against the authorization of lotteries by the General Assembly in order to provide an exception for lotteries operated by and for the benefit of the State." The Maryland state lottery has since been authorized and implemented, and it operates in substantial measure as does the New Jersey state lottery which is involved in this proceeding. The Maryland Public Broadcasting Commission thus faces substantially the same situation now faced by broadcasters in New Jersey.

In the considered judgment of the Maryland Public Broadcasting Commission, as a licensee of the Federal Communications Commission and a public trustee, the broadcast of the winning lottery ticket number, and on occasion the drawing ceremony itself, has legitimate news value. As part of its news function, the Maryland Public Broadcasting Commission desires to report on the operations of the State lottery. In its role as a broadcaster and as a State institution, the Maryland Public Broadcasting Commission desires to inform citizens of the operations of the lottery. If the Federal Communications Commission's Order is upheld, the citizens of Maryland will be placed in the anomalous

position of having enacted a popular lottery program which their State-owned and operated broadcasting facilities must ignore in their reporting of Maryland news. The Maryland Public Broadcasting Commission must add its voice to those who object to the Federal Communications Commission's erroneous reading of the lottery statute.

Petitioners United States and the Federal Communications Commission in the final analysis ground their argument on the contention that the broadcast of the winning lottery number cannot be legitimately classified by editorial decision as news (Petitioners' Brief, para. 3). Yet the announcement of the winning number is clearly a report on a past event of significance to large numbers of people. Those interested people have already made their decision to participate in the State lottery, and in fact it is of course too late to participate in a particular drawing once the winning number has been chosen. Therefore the announcement of the winning number can to no significant extent constitute promotion of participation in the lottery. The Federal Communications Commission has itself recognized that an announcement of the winning number has "some limited news value," *Declaratory Ruling*, 30 F.C.C.2d 794, 795. The fact that information of at least some unquestioned news value may be viewed as incidentally promoting the activity which it reports does not justify censorship of the news. The public right to public information must be protected against such censorship.

The Maryland Public Broadcasting Commission is familiar with the points advanced in this proceeding by the Respondent New Jersey State Lottery Commission. The Maryland Public Broadcasting Commission endorses

the position of Respondent and submits that the judgment of the United States Court of Appeals for the Third Circuit should be affirmed.

Respectfully submitted,

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THE MARYLAND PUBLIC
BROADCASTING COMMISSION

October 11, 1974

CERTIFICATE OF SERVICE

I, Louis Schwartz, a member of the Bar of the Supreme Court of the United States and counsel to the Maryland Public Broadcasting Commission, Amicus Curiae, certify that three copies of the foregoing Statement In Lieu Of Brief Amicus Curiae, were mailed, via U.S. Mail, postage prepaid, to the following attorneys of record: Stephen Skillman, Assistant Attorney General, State of New Jersey, State House Annex, Trenton, New Jersey 08625; David H. Souter, Deputy Attorney General, State of New Hampshire, State House Annex, Concord, New Hampshire 03301; Daniel R. Schaefer, Assistant Attorney General, State of Connecticut, 30 Trinity Street, Hartford, Connecticut 06115; John B. Summers, National Association of Broadcasters, 1771 N Street, N.W., Washington, D. C. 20036; Israel Packel, Attorney General, State of Pennsylvania, 238 State Capitol, Harrisburg, Pennsylvania 17120; Stephen T. Parisi, Special Counsel to William J. Brown, Attorney General of the State of Ohio, 1500 Central National Bank Building, Cleveland, Ohio 44114; Robert H. Bork, Solicitor General, Department of Justice, Washington, D. C. 20530; Thomas B. Kauper, Assistant Attorney General, Department of Justice, Washington, D. C. 20530; Lovis Claiborne, Assistant Solicitor General, Department of Justice, Washington, D. C. 20530; Danny J. Boggs, Assistant Solicitor General, Department of Justice, Washington, D. C. 20530; Ashton R. Hardy, General Counsel, Federal Communications Commission, 1919 M Street, N.W., Washington, D. C. 20554; Joseph A.

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